

DAVID N. KELLEY
United States Attorney for the
Southern District of New York
Attorney for the United States of America
By: RUSSELL M. YANKWITT (RY-6487)
Assistant United States Attorney
86 Chambers Street -- 6th Floor
New York, New York 10007
Telephone: (212) 637-2745

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
HOI L. WAN, :

Plaintiff, :

- against - : 05 Civ. 4295 (CBM) (ECF)

UNITED STATES POSTAL SERVICE : DEFENDANT'S RULE 56.1
and JOHN E. POTTER, Postmaster : STATEMENT
General of UNITED STATES :
POSTAL SERVICE, :

Defendants.

----- x

Pursuant to Civil Rule 56.1 of the Local Rules of the
United States District Court for the Southern District of New
York, defendant John E. Potter states that there is no genuine
issue to be tried with respect to the following material facts:

1. On March 14, 2004, Plaintiff sought EEO
counseling, alleging retaliation on the basis of his filing the
Wan I Complaint. (See Wan II Compl. ¶ 10); (Yankwitt Decl. Ex.
B).

2. On May 20, 2004, Plaintiff received a Notice of
Right to File Individual Complaint from the USPS EEO. (See
Sturman Decl. ¶ 14).

3. On June 4, 2004, Plaintiff filed a formal EEO

complaint alleging retaliation for protected activities under Title VII. (Id. at ¶ 15).

4. The USPS Office of EEO Compliance and Appeals made a Final Agency Decision on the merits of this administrative complaint, finding that there was no retaliation, on December 6, 2004. (Id. at ¶ 16; Yankwitt Decl. Ex. D).

5. Plaintiff did not appeal this decision with the EEOC's OFO. (Id. at ¶ 17). Instead, Plaintiff waited until April 29, 2005, 144 days later, to file a complaint in Federal court alleging retaliation for activities protected under Title VII. (See Wan II Compl. at 1); (Yankwitt Decl. Ex. B).

By submitting this statement, defendant does not waive its right to contend that any of the above-referenced facts are not material to the present action.

Dated: New York, New York
June 28, 2005

DAVID KELLEY
United States Attorney for the
Southern District of New York
Attorney for Defendant John E. Potter

By: 

RUSSELL M. YANKWITT
Assistant United States Attorney
86 Chambers Street -- 6th Floor
New York, New York 10007
Telephone: (212) 637-2745
Facsimile: (212) 637-2685